

REPRESENTATIVES FOR PETITIONERS:  
Chris Hiatt, President of Key Enterprises, Inc.

REPRESENTATIVE FOR RESPONDENT:  
Joseph Rhetts, Brooke Stevens, P.C.

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

David & Jane Hiatt, Trustee /	)	Petition Nos.:	18-007-12-3-5-00897-17
Chris Hiatt, President/Broker,	)		18-007-13-3-5-00896-17
	)		18-007-15-3-5-00895-17
Petitioners,	)		18-007-13-3-5-00893-17
	)		18-007-14-3-5-00894-17
	)		18-007-15-3-5-00891-17
	)		18-007-12-3-5-00890-17
	)		18-007-13-3-5-00889-17
	)		18-007-15-3-5-00888-17
	)		18-007-12-3-5-00887-17
	)		18-007-13-3-5-00886-17
	)		18-007-15-3-5-00885-17
v.	)		18-007-12-3-5-00884-17
	)		18-007-13-3-5-00883-17
	)		18-003-15-3-5-00882-17
	)		
	)	Parcel Nos.:	18-07-29-304-001.000-007
	)		18-07-29-305-004.000-007
	)		18-07-29-306-006.000-007
	)		18-07-29-330-007.000-007
	)		18-07-29-330-008.000-007
	)		
	)	County:	Delaware
	)		
Delaware County Assessor,	)	Township:	Hamilton
	)		
Respondent.	)	Assessment Years:	2012, 2013, 2014 & 2015

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**November 26, 2018**

## FINAL DETERMINATION

The Indiana Board of Tax Review (Board), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

#### ISSUE

1. The Petitioners claim stipulated assessments were not correctly applied for the tax years under appeal, resulting in erroneous computations of tax liabilities, delinquencies, and penalties. Did the Petitioners make a prima facie case?

#### PROCEDURAL HISTORY

2. The Petitioners filed fifteen Petitions for Correction of an Error (Form 133s) for the 2012-2015 tax years with the Delaware County Auditor on November 29, 2016. The Delaware County Property Tax Assessment Board of Appeals (PTABOA) failed to act on the Petitioners' Form 133s. Thus, the Petitioners sought review with the Board. *See* Ind. Code § 6-1.1-15-1(k) and (o) (allowing a taxpayer to seek review by the Board if a county PTABOA does not hold a hearing within 180 days of the taxpayer filing its notice of review with the county or township assessor). The Petitioners filed their Form 133s with the Board on June 26, 2017.
3. On February 27, 2018, the Board's administrative law judge, Dalene McMillen (ALJ), held a consolidated hearing on the petitions. Neither the Board nor the ALJ inspected the properties.
4. Chris Hiatt appeared *pro se* and was sworn as a witness.<sup>1</sup> Attorney Joseph Rhetts appeared for the Respondent. Jennifer Goins was sworn as a witness for the Petitioners.
5. The Petitioners offered the following exhibits:

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<sup>1</sup> Mr. Hiatt signed the various petitions as President of Key Enterprises, Inc.

Parcel #18-07-29-304-001.000-007:

Petitioner Exhibit A: Petitioners' request for discovery from Assessor, Auditor, and Treasurer, dated February 7, 2018,  
Petitioner Exhibit A1: 2012 Joint Report by Taxpayer/Assessor to the County Board of Appeals of a Preliminary Informal Meeting – Form 134 (Form 134),  
Petitioner Exhibit A2: Special Message to Property Owner (Form TS-1A) for taxes payable 2013,  
Petitioner Exhibit A3: Tax statement summary, dated May 8, 2013,  
Petitioner Exhibit A4: Key Enterprises' check stub #048006, dated November 6, 2013,  
Petitioner Exhibit B1: 2013 Form 134,  
Petitioner Exhibit B2: Form TS-1A for taxes payable 2014,  
Petitioner Exhibit B3: Key Enterprises' check stub #048559, dated May 7, 2014, and check stub #049044, dated November 5, 2014,  
Petitioner Exhibit C1: 2015 Form 134,  
Petitioner Exhibit C2: Form TS-1A for taxes payable 2016,  
Petitioner Exhibit C3: Key Enterprises' check stub #050582, dated May 9, 2016, and check stub #051067, dated November 18, 2016,  
Petitioner Exhibit D1: Form TS-1A for taxes payable 2015,  
Petitioner Exhibit D2: Tax bill for taxes payable 2015,  
Petitioner Exhibit D3: Key Enterprises' check stub #049574, dated May 11, 2015, and check stub #050143, dated November 9, 2015,  
Petitioner Exhibit E1: Tax bill for taxes payable 2017,  
Petitioner Exhibit E2-E3: Delaware County Real Estate Tax Inquiry (Tax Inquiry) for taxes payable 2017.

Parcel #18-07-29-305-004.000-007:

Petitioner Exhibit A: Petitioners' request for discovery from Assessor, Auditor and Treasurer, dated February 7, 2018,  
Petitioner Exhibit A1: 2013 Form 134,  
Petitioner Exhibit A2: Form TS-1A for taxes payable 2014,  
Petitioner Exhibit A3: Key Enterprises' check stub #048559, dated May 7, 2014, and check stub #049044, dated November 5, 2014,  
Petitioner Exhibit B1: 2014 Form 134,  
Petitioner Exhibit B2: Form TS-1A for taxes payable 2015,  
Petitioner Exhibit B3: Key Enterprises' check stub #049570, dated May 7, 2015, and check stub #050141, dated November 9, 2015,  
Petitioner Exhibit C1: 2015 Form 134,

Petitioner Exhibit C2: Form TS-1A for taxes payable 2016,  
Petitioner Exhibit C3: Key Enterprises' check stub #050582, dated May 9,  
2016, and check stub #051067, dated November 8,  
2016,  
Petitioner Exhibit D1-D2: Tax Inquiry for taxes payable 2017,  
Petitioner Exhibit D3: Tax bill for taxes payable 2017.

Parcel #18-07-29-306-006.000-007:

Petitioner Exhibit A: Petitioners' request for discovery from Assessor,  
Auditor and Treasurer, February 7, 2018,  
Petitioner Exhibit A1: 2012 Form 134,  
Petitioner Exhibit A2: Form TS-1A for taxes payable 2013,  
Petitioner Exhibit A3: Tax statement summary, dated May 8, 2013,  
Petitioner Exhibit A4: Key Enterprises' check stub #048006, dated November  
6, 2013,  
Petitioner Exhibit B1: 2013 Form 134,  
Petitioner Exhibit B2: Form TS-1A for taxes payable 2014,  
Petitioner Exhibit B3: Key Enterprises' check stub #048559, dated May 7,  
2014, and check stub #049044, dated November 5,  
2014,  
Petitioner Exhibit C1: 2015 Form 134,  
Petitioner Exhibit C2: Form TS-1A for taxes payable 2016,  
Petitioner Exhibit C3: Key Enterprises' check stub #050582, dated May 9,  
2016, and check stub #051067, dated November 8,  
2016,  
Petitioner Exhibit D1: Tax bill for taxes payable 2017,  
Petitioner Exhibit D2-D3: Tax Inquiry for taxes payable 2017.

Parcel #18-07-29-330-007.000-007:

Petitioner Exhibit A: Petitioners' request for discovery from Assessor,  
Auditor and Treasurer, February 7, 2018,  
Petitioner Exhibit A1: 2012 Form 134,  
Petitioner Exhibit A2: 2012 Notification of Final Assessment Determination  
(Form 115), dated September 30, 2014,  
Petitioner Exhibit A3: Form TS-1A for taxes payable 2013,  
Petitioner Exhibit A4: Tax statement summary, dated May 8, 2013,  
Petitioner Exhibit A5: Key Enterprises' check stub #048006, dated November  
6, 2013,  
Petitioner Exhibit B1: 2013 subject property record card (PRC),  
Petitioner Exhibit B2: Form TS-1A for taxes payable 2014,  
Petitioner Exhibit B3: Key Enterprises' check stub #048559, dated May 7,  
2014, and check stub #049044, dated November 5,  
2014,  
Petitioner Exhibit C1: 2015 Form 134,

Petitioner Exhibit C2: Form TS-1A for taxes payable 2016,  
Petitioner Exhibit C3: Key Enterprises' check stub #050583, dated May 9,  
2016, and check stub #051067, dated November 8,  
2016,  
Petitioner Exhibit D1: Tax bill for taxes payable 2017,  
Petitioner Exhibit D2-D3: Tax Inquiry for taxes payable 2017.

Parcel #18-07-29-330-008.000-007:

Petitioner Exhibit A: Petitioners' request for discovery from Assessor,  
Auditor and Treasurer, February 7, 2018,  
Petitioner Exhibit A1: 2012 Form 134,  
Petitioner Exhibit A2: Form TS-1A for taxes payable 2013,  
Petitioner Exhibit A3: Tax statement summary, dated May 8, 2013,  
Petitioner Exhibit A4: Key Enterprises' check stub #048006, dated November  
6, 2013,  
Petitioner Exhibit B1: 2013 Form 134,  
Petitioner Exhibit B2: Form TS-1A for taxes payable 2014,  
Petitioner Exhibit B3: Key Enterprises' check stub #048560, dated May 7,  
2014, and check stub #049045, dated November 5,  
2014,  
Petitioner Exhibit C1: 2015 Form 134,  
Petitioner Exhibit C2: Form TS-1A for taxes payable 2016,  
Petitioner Exhibit C3: Key Enterprises' check stub #050583, dated May 9,  
2016, and check stub #051068, dated November 8,  
2016,  
Petitioner Exhibit D1: Tax bill for taxes payable 2017,  
Petitioner Exhibit D2-D3: Tax Inquiry for taxes payable 2017.

6. The Respondent did not offer any exhibits.
7. The record also includes (1) all pleadings, briefs, motions, and documents filed in the current appeals, (2) all orders and notices issued by the Board or ALJ, and (3) a digital recording of the hearing.

#### **OBJECTIONS**

8. The Respondent objected to Petitioners' Exhibits A2, A3, and B2 for each parcel under appeal on the grounds of relevancy. These exhibits include Form TS-1As, tax statement summaries, and check stubs. The ALJ took the objections under advisement. The Respondent's objections go to the weight of the exhibits rather than the admissibility.

Thus, the Board overrules the Respondent's objections and Petitioners' Exhibits A2, A3, and B2 are admitted.

9. The Respondent also objected to Ms. Goins' testimony regarding a conversation with an employee in the Assessor's office. Mr. Rhetts argued Ms. Goins could not identify who she spoke to and the person was not present to be cross-examined, therefore her testimony was hearsay. The ALJ took the objection under advisement. "Hearsay" is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. Such a statement can be either oral or written. (Ind. R. Evid. 801 (c)). The Board's procedural rules specifically address hearsay evidence:

Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If not objected to, the hearsay evidence may form the basis for a determination. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting determination may not be based solely upon the hearsay evidence.

52 IAC 3-1-5 (b). The word "may" is discretionary, not mandatory. In other words, the Board can permit hearsay evidence to be entered in the record, but is not required to allow it. Mr. Rhetts properly objected to the testimony and the Petitioners failed to establish that any recognized exception applies. The testimony is admitted, but cannot serve as the sole basis for the Board's decision.

#### **PETITIONERS' CONTENTIONS**

10. The five properties under appeal are located at 3209 & 3211 West Cypress Drive, 5300 & 5302 Poplar Drive, 3001 & 3003 West Cypress Drive, 2700 & 2702 West Cypress Drive, and 2705 & 2707 West Cypress Drive. *Hiatt testimony.*

11. The Petitioners appealed the 2012, 2013, and 2014 assessments of all five properties. As a result of the appeals, the Petitioners and the Assessor stipulated to lower values.<sup>2</sup> *Hiatt testimony; Pet'r Exs. A, A1, A2, B1, C1.*
12. While their appeals were pending, the Petitioners paid their taxes “based on the amount of 2011 or 2012 tax liability.” Accordingly, no penalties or delinquencies should have been imposed.<sup>3</sup> *Hiatt testimony.*
13. The Respondent failed to apply the “agreed upon assessed values” to the 2012, 2013, and 2014 assessment years. As a result of this error, the Petitioners taxes were overstated and appeared as delinquent even though they did not owe the amount shown. *Hiatt testimony.*
14. The Petitioners submitted calculations for each year under appeal to show the amount of taxes due based on the “corrected assessed value minus the amount paid.” Based on these calculations the Petitioners “overpaid their taxes.” *Hiatt argument (see Petitioners’ calculations on final page of Board’s determination); Pet'r Exs. A1, A2, A3, A4, B1, B2, B3.*
15. According to Ms. Goins, administrative assistant for Key Enterprises, she contacted the Assessor’s office regarding overpayments made for the property located at 3209 & 3211 West Cypress Drive. Ms. Goins testified that an employee in the Assessor’s office instructed her to “subtract the \$122.80 overpayment from the spring 2014 payable 2015 tax liability” and to “disregard the \$13.78 and \$137.84 shown as delinquent penalty and tax.” *Goins testimony; Pet'r Exs. D2, D3.*
16. The Petitioners filed appeals for the 2015 assessment year to “demonstrate that they were assessed and paid on the correct value.” In addition, they stated they did not receive credit for the previous years’ overpayments. According to the Petitioners, the 2015

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<sup>2</sup> The Petitioners only offered the first page of their Form 134s, they did not include the second page containing the parties’ signatures or the date signed.

<sup>3</sup> The Petitioners claim that due to clerical errors, they overpaid on the storm water and ditch taxes for several of the years under appeal. However, the Petitioners failed to testify regarding what parcels or what years under appeal the overpayments were made.

documents did not indicate delinquent taxes, interest, or penalties were owed. *Hiatt testimony; Pet'r Exs. C1, C2, C3.*

17. However, when the Petitioners received their tax bills due payable in 2017, they were informed that delinquent taxes and penalties were owed. According to their records, they should be receiving credits for overpayments and not delinquent taxes and penalties. The Petitioners continue to pay the "billed tax liability," although their tax statements indicate the treasurer's office is applying their payment "first to the unsupported delinquent taxes and penalties." *Hiatt testimony; Pet'r Exs. D1, E1.*

### **RESPONDENT'S CONTENTIONS**

18. The Petitioners failed to provide sufficient evidence to show the taxes, delinquencies and penalties are erroneous. According to the Respondent, all of the Petitioners' properties "must be analyzed first to insure there are not taxes, penalties or interest due before any refunds are given." If it turns out any refunds or credits are owed, they would be applied to other properties owned by the Petitioners before a refund would be issued. *Rhetts argument.*
19. When a taxpayer makes a property tax payment exceeding the actual property tax liability for a particular parcel, the county treasurer is statutorily obligated to apply the excess payment amount according to the provisions set forth in Ind. Code § 6-1.1-26-1.1. Accordingly, a county treasurer shall place the portion of a tax or special assessment payment which exceeds the amount actually due, as shown by the tax statement, in a special fund known as a "surplus tax fund." Amounts placed in the "surplus" fund shall first be applied to the taxpayer's delinquent taxes in the manner provided in Ind. Code § 6-1.1-23-5(b). According to Ind. Code § 6-1.1-23-5(b), the "surplus" funds are to be, (1) applied to delinquent personal property taxes owed in the county by the taxpayer, then (2) applied to delinquent real property taxes owed in the county by the taxpayer. Here, the Petitioners are requesting the county to ignore the statutes, which they will not do. *Rhetts argument.*

## ANALYSIS

20. The Board lacks the authority to address the Petitioners' claims.<sup>4</sup> The Board is a creation of the legislature, and it has only those powers conferred by statute. *Whetzel v. Dep't of Local Gov't Fin.*, 761 N.E.2d 1093, 1096 (Ind. Tax Ct. 2002) citing *Matonovich v. State Bd. of Tax Comm'rs*, 715 N.E.2d 1018, 1021 (Ind. Tax Ct. 1999).
21. The Board is the state agency charged with deciding property tax assessment appeals. The Board addresses appeals contesting real and personal property assessments. It also addresses appeals concerning property tax exemptions, deductions, and credits. The Board, however, lacks jurisdiction to address appeals where taxpayers contest only their tax bill and not their property's assessment.
22. Indiana Code § 6-1.5-4-1 identifies the subject matter the Board is authorized to address, and provides as follows:
- (a) The Indiana board shall conduct an impartial review of all appeals concerning:
    - (1) the assessed valuation of tangible property;
    - (2) property tax deductions;
    - (3) property tax exemptions;
    - (4) property tax credits;that are made from a determination by an assessing official or county property tax assessment board of appeals to the Indiana board under any law.
  - (b) Appeals described in this section shall be conducted under IC 6-1.1-15.
- Ind. Code § 6-1.5-4-1.
23. Here the Petitioners did not contest their assessment. Instead, they contested the taxes applied to their assessment. In *Irwin Mortgage Corp. v. Ind. Bd. of Tax Review*, the Indiana Tax Court held that Ind. Code § 6-1.5-4-1 did not give the Board authority to

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<sup>4</sup> Throughout the hearing, the Petitioners referred to "penalties and delinquencies" as if both were part of the same claim. In this case, the Board finds that the two are inextricably linked. The Board can only infer that in using the term "delinquencies," the Petitioners were referring to the principal balances of overdue taxes. Additionally, in using the term "penalties," the Petitioners were referring to the additional fines attached to the delinquencies. To the extent the Petitioners intended to offer separate arguments for each term, they failed to do so. Regardless, as discussed herein, the Board lacks the authority granted in the enabling statute to review either penalties or delinquencies as they are defined here.

review penalties imposed for late payment of property taxes. *Irwin Mortgage Corp. v. Ind. Bd. of Tax Review*, 775 N.E.2d 720, 723-24 (Ind. Tax Ct. 2002); *see also Whetzel*, 761 N.E.2d at 904 (reaching the same conclusion regarding the authority of the Board’s predecessor agency, the State Board of Tax Commissioners). The tax court upheld the Board’s determination dismissing an appeal in which the taxpayer challenged the assessment of penalties against it. *Irwin Mortgage*, 755 N.E.2d at 724.

- 24. The Tax Court has held that the Board’s enabling statute “did not grant any power to the State Board to review penalties by the county for the late payment of property taxes,” because it contemplated only a review of assessments, deductions, exemptions, and credits.<sup>5</sup> *Whetzel*, 761 N.E.2d at 904.
- 25. Accordingly, to the extent the Petitioners claim that local officials miscalculated and improperly applied penalties and delinquencies to their taxes, the Board lacks the authority to address that claim. Given the clear language of *Whetzel*, the Board lacks jurisdiction to afford the Petitioners relief with regards to penalties and delinquencies.

**CONCLUSION**

- 26. The Board lacks jurisdiction to review the Petitioners’ claim that its taxes were improperly calculated, resulting in penalties and delinquencies.

The Indiana Board of Tax Review issues the Final Determination of the above captioned matter on the date written above.

\_\_\_\_\_  
Chairman, Indiana Board of Tax Review

\_\_\_\_\_  
Commissioner, Indiana Board of Tax Review

\_\_\_\_\_  
Commissioner, Indiana Board of Tax Review

<sup>5</sup> *Whetzel* cited Ind. Code § 6-1.1-30-11 which has since been repealed, but is now in effect in substantially similar language in Ind. Code § 6-1.5-4-1(a).

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.

	Original A.V. on TS-1A Form	Form 134 PRC Form 115	TS-1A Form Tax Liability plus ditch ect	Petitioners' calculated Tax Liability plus ditch ect.	Petitioners' Taxes Paid	Petitioners' claimed Overpayment	Petitioners' claimed credit	Delinquent Taxes & Penalties	Exhibit #s
<b>18-07-29-304-001.000-007: 3209 &amp; 3211 West Cypress Drive</b>									
March 1, 2012 payable 2013	85,300	74,700	\$1,788.00	\$1,576.00	\$1,624.00	\$48.00			A1 - A4
March 1, 2013 payable 2014	89,600	74,800	\$1,845.20	\$1,549.20	\$1,624.00	\$74.80			B1 - B3
March 1, 2014 payable 2015	75,400		\$1,561.20		\$1,438.40		\$122.80		D1 - D3
March 1, 2015 payable 2016	75,400	75,400	\$1,590.00	\$1,590.00	\$1,590.00	0	0		C1 - C3
March 1, 2016 payable 2017								\$401.76	E1
<b>18-07-29-305-004.000-007: 5300 &amp; 5302 Poplar Drive</b>									
March 1, 2013 payable 2014	93,400	90,000	\$1,921.20	\$1,853.20	\$1,858.00	\$4.80			A1 - A3
March 1, 2014 payable 2015	98,200	90,000	\$2,017.20	\$1,853.20	\$1,858.00	\$4.80			B1 - B3
March 1, 2015 payable 2016	90,000	90,000	\$1,882.00	\$1,882.00	\$1,882.00	0	0		C1 - C3
March 1, 2016 payable 2017							\$9.60		
<b>18-07-29-306-006.000-007: 3001 &amp; 3003 West Cypress Drive</b>									
March 1, 2012 payable 2013	81,000	74,700	\$1,702.00	\$1,576.00	\$1,616.00	\$40.00			A1 - A3
March 1, 2013 payable 2014	84,900	74,600	\$1,751.20	\$1,545.20	\$1,616.00	\$70.80			B1 - B3
March 1, 2015 payable 2016	74,500	74,500	\$1,571.98	\$1,571.98	\$1,571.98	0	0		C1 - C3
March 1, 2016 payable 2017								\$226.88	D1
<b>18-07-29-330-007.000-007: 2700 &amp; 2702 West Cypress Drive</b>									
March 1, 2012 payable 2013	92,900	74,000	\$1,940.00	\$1,562.00	\$1,610.00	\$48.00			A1 - A5
March 1, 2013 payable 2014	95,000	74,100	\$1,953.20	\$1,535.20	\$1,610.00	\$74.80			B1 - B3
March 1, 2015 payable 2016	74,200	74,200	\$1,565.98	\$1,565.98	\$1,565.98	0	0		C1 - C3
March 1, 2016 payable 2017								\$781.20	D-1
<b>18-07-29-330-008.000-007: 2705 &amp; 2707 West Cypress Drive</b>									
March 1, 2012 payable 2013	92,200	74,500	\$1,926.00	\$1,572.00	\$1,622.00	\$50.00			A1 - A4
March 1, 2013 payable 2014	94,600	74,800	\$1,945.20	\$1,549.20	\$1,622.00	\$72.80			B1 - B3
March 1, 2015 payable 2016	75,000	75,000	\$1,582.00	\$1,582.00	\$1,582.00	0	0		C1 - C3
March 1, 2016 payable 2017								\$697.34	D1